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(f/k/a Shenzhen Smok Technology Co., Ltd.)

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MIKE SARIEDDINE, an individual	)	CASE NO. 2:17-cv-2390-DSF-SK
	)	
Plaintiff,	)	<b>DEFENDANT SHENZHEN IVPS</b>
	)	<b>TECHNOLOGY CO., LTD.'S</b>
vs.	)	<b>ANSWER TO PLAINTIFF'S</b>
	)	<b>FIRST AMENDED COMPLAINT</b>
D&A DISTRIBUTION, LLC (dba	)	
STRICTLY E-CIG), a Georgia limited	)	FAC Filed: January 3, 2018
liability company et al.	)	
	)	
Defendants.	)	
	)	

1 Defendant Shenzhen IVPS Technology Co., Ltd. f/k/a Shenzhen Smok  
 2 Technology Co., Ltd. (“Smok”) hereby answers plaintiff Mike Saredidine’s  
 3 (“Saredidine”) First Amended Complaint as follows:

4 **ANSWER TO THE ALLEGATIONS OF**  
 5 **THE FIRST AMENDED COMPLAINT**

6 1. The allegations in Paragraph 1 state legal conclusions to which no  
 7 response is required. Smok denies all remaining allegations in Paragraph 1.

8 2. Smok lacks knowledge or information sufficient to form a belief as to the  
 9 truth or falsity of the allegations in Paragraph 2, and therefore denies the same.

10 3. Smok admits that it began to market and sell vaporizer products under the  
 11 name Alien Kit in 2016. Smok denies all remaining allegations in Paragraph 3.

12 4. Smok admits that Saredidine contacted Smok in August 2016. Smok  
 13 further admits that it executed a purported agreement in October 2016 (the “Purported  
 14 Agreement”). The terms of the Purported Agreement are reflected in the Purported  
 15 Agreement itself, and Smok denies all allegations inconsistent with the text of the  
 16 Purported Agreement. Smok denies all remaining allegations in Paragraph 4.

17 5. The terms of the Purported Agreement are reflected in the Purported  
 18 Agreement itself, and Smok denies all allegations inconsistent with the text of the  
 19 Purported Agreement. Smok denies all remaining allegations in Paragraph 5.

20 6. The terms of the Purported Agreement are reflected in the Purported  
 21 Agreement itself, and Smok denies all allegations inconsistent with the text of the  
 22 Purported Agreement. Smok denies all remaining allegations in Paragraph 6.

23 7. Smok admits that, in January 2017, it began to market a new vaporizer  
 24 product under the name “AL85.” Smok denies all remaining allegations in  
 25 Paragraph 7.

26 8. The allegation of “infringement” in Paragraph 8 sets forth a legal  
 27 conclusion to which no response is required. Smok admits that Saredidine—both  
 28 personally and through counsel—contacted Smok regarding purported infringement

1 and alleged breaches. Smok lacks information or knowledge sufficient to form a belief  
2 as to the truth or falsity of the allegation regarding when Saredidine discovered the  
3 purported infringement, and therefore denies the same. Smok denies all remaining  
4 allegations in Paragraph 8.

5 9. Smok admits that it markets a vaporizer product under the name “AL85.”  
6 Smok denies all remaining allegations in Paragraph 9.

7 10. The allegations in Paragraph 10 set forth legal conclusions to which no  
8 response is required. Smok denies all remaining allegations in Paragraph 10.

9 11. The allegations in Paragraph 11 regarding Saredidine’s “trademark  
10 rights” set forth legal conclusions to which no response is required. Smok admits that  
11 it advertises and sells the Smok AL85 vaporizer product. Smok lacks knowledge or  
12 information sufficient to form a belief as to the truth or falsity of the remaining  
13 allegations in Paragraph 11, and therefore denies the same.

14 12. The allegations in Paragraph 12 set forth legal conclusions to which no  
15 response is required. Smok denies all remaining allegations in Paragraph 12.

16 13. The allegations in Paragraph 13 set forth legal conclusions to which no  
17 response is required.

18 14. The allegations in Paragraph 14 set forth legal conclusions to which no  
19 response is required. Smok denies all remaining allegations in Paragraph 14.

20 15. The allegations in Paragraph 15 set forth legal conclusions to which no  
21 response is required. Smok denies all remaining allegations in Paragraph 15.

22 16. Smok lacks knowledge or information sufficient to form a belief as to the  
23 truth or falsity of the allegations in Paragraph 16, and therefore denies the same.

24 17. Smok lacks knowledge or information sufficient to form a belief as to the  
25 truth or falsity of the allegations in Paragraph 17, and therefore denies the same.

26 18. The allegations in Paragraph 18 set forth legal conclusions to which no  
27 response is required.  
28

1           19. Smok lacks knowledge or information sufficient to form a belief as to the  
2 truth or falsity of the allegations in Paragraph 19, and therefore denies the same.

3           20. Smok lacks knowledge or information sufficient to form a belief as to the  
4 truth or falsity of the allegations in Paragraph 20, and therefore denies the same.

5           21. Smok lacks knowledge or information sufficient to form a belief as to the  
6 truth or falsity of the allegations in Paragraph 21, and therefore denies the same.

7           22. Smok lacks knowledge or information sufficient to form a belief as to the  
8 truth or falsity of the allegations in Paragraph 22, and therefore denies the same.

9           23. Smok lacks knowledge or information sufficient to form a belief as to the  
10 truth or falsity of the allegations in Paragraph 23, and therefore denies the same.

11           24. Smok admits the allegations in Paragraph 24.

12           25. Smok denies the allegations in Paragraph 25.

13           26. Smok lacks knowledge or information sufficient to form a belief as to the  
14 truth or falsity of the allegations in Paragraph 26, and therefore denies the same.

15           27. Smok lacks knowledge or information sufficient to form a belief as to the  
16 truth or falsity of the allegations in Paragraph 27, and therefore denies the same.

17           28. Smok lacks knowledge or information sufficient to form a belief as to the  
18 truth or falsity of the allegations in Paragraph 28, and therefore denies the same.

19           29. Smok lacks knowledge or information sufficient to form a belief as to the  
20 truth or falsity of the allegations in Paragraph 29, and therefore denies the same.

21           30. Smok lacks knowledge or information sufficient to form a belief as to the  
22 truth or falsity of the allegations in Paragraph 30, and therefore denies the same.

23           31. Smok lacks knowledge or information sufficient to form a belief as to the  
24 truth or falsity of the allegations in Paragraph 31, and therefore denies the same.

25           32. Smok lacks knowledge or information sufficient to form a belief as to the  
26 truth or falsity of the allegations in Paragraph 32, and therefore denies the same.

27           33. Smok lacks knowledge or information sufficient to form a belief as to the  
28 truth or falsity of the allegations in Paragraph 33, and therefore denies the same.

1           34. Smok admits that there is an active website located at URL  
2 [www.alienvape.com](http://www.alienvape.com), and that certain goods are promoted on that website. Smok lacks  
3 knowledge or information sufficient to form a belief as to the truth or falsity of the  
4 remaining allegations in Paragraph 34, and therefore denies the same.

5           35. Smok denies the allegations in Paragraph 35.

6           36. Smok denies the allegations in Paragraph 36.

7           37. Smok admits the allegations in Paragraph 37.

8           38. The allegations in Paragraph 38 set forth legal conclusions to which no  
9 response is required. Smok denies all remaining allegations in Paragraph 38.

10          39. The allegation in Paragraph 39 regarding the existence of Sarieddine's  
11 common-law rights sets forth a legal conclusion to which no response is required.  
12 Smok lacks knowledge or information sufficient to form a belief as to the truth or  
13 falsity of the remaining allegations in Paragraph 39, and therefore denies the same.

14          40. Smok lacks knowledge or information sufficient to form a belief as to the  
15 truth or falsity of the allegations in Paragraph 40 regarding Sarieddine's marketing,  
16 promotion, and use of his purported marks, and therefore denies the same. Smok  
17 denies all remaining allegations in Paragraph 40.

18          41. Smok admits that it began selling a vaporizer under the brand name  
19 "Alien Kit" in 2016. Smok denies all remaining allegations in Paragraph 41.

20          42. Smok lacks knowledge or information sufficient to form a belief as to the  
21 truth or falsity of the allegations in Paragraph 42, and therefore deny the same.

22          43. Smok admits that Sarieddine contacted Smok regarding purported  
23 infringement, and that Sarieddine had a telephone conversation with a representative  
24 of Smok. Smok denies all remaining allegations in Paragraph 43.

25          44. Smok admits that it executed the Purported Agreement. The terms of the  
26 Purported Agreement are reflected in the Purported Agreement itself, and Smok  
27 denies all allegations inconsistent with the text of the Purported Agreement. Smok  
28 denies all remaining allegations in Paragraph 44.

1           45. Smok admits that Sarieddine contacted Smok on multiple occasions after  
2 Smok executed the Purported Agreement. Smok denies all remaining allegations in  
3 Paragraph 45.

4           46. The terms of the Purported Agreement are reflected in the Purported  
5 Agreement itself, and Smok denies all allegations inconsistent with the text of the  
6 Purported Agreement. Smok denies all remaining allegations in Paragraph 46.

7           47. The terms of the Purported Agreement are reflected in the Purported  
8 Agreement itself, and Smok denies all allegations inconsistent with the text of the  
9 Purported Agreement. Smok denies all remaining allegations in Paragraph 47.

10           48. Smok admits that it communicated with the plaintiff but denies the  
11 remaining allegations of Paragraph 48.

12           49. Smok admits that it paid \$15,000 to Sarieddine in approximately  
13 November 2016. Smok denies all remaining allegations in Paragraph 49.

14           50. Smok admits that it last made a payment to Sarieddine several months  
15 prior to the filing of the Complaint. Smok denies all remaining allegations in  
16 Paragraph 50.

17           51. Smok denies the allegations in Paragraph 51.

18           52. Smok lacks knowledge or information sufficient to form a belief as to the  
19 truth or falsity of the allegations in Paragraph 52 regarding when Plaintiff became  
20 aware of any alleged plans formulated by Smok, and therefore denies the same. Smok  
21 admits that, in January 2017, it was planning to launch a new vaporizer product. Smok  
22 denies all remaining allegations in Paragraph 52.

23           53. The allegations in Paragraph 53 regarding infringement and breach set  
24 forth legal conclusions to which no response is required. Smok admits that Sarieddine  
25 sent multiple emails to Smok personnel regarding a vaporizer product. Smok denies  
26 all remaining allegations in Paragraph 53.

27           54. Smok admits that it communicated with Sarieddine on or about January  
28 5, 2017. Smok denies the remaining allegations in Paragraph 54.

1           55. Smok denies the allegations in Paragraph 55.

2           56. Smok admits that Saredidine contacted Smok in January 2017 to  
3 complain. Smok admits that its personnel responded to Saredidine and admits that it  
4 advertises and sells the Smok AL85 vaporizer product. Smok denies all remaining  
5 allegations in Paragraph 56.

6           57. Smok denies the allegations in Paragraph 57.

7           58. The allegation in Paragraph 58 regarding infringement sets forth a legal  
8 conclusion to which no response is required. Smok denies all remaining allegations in  
9 Paragraph 58.

10          59. The allegation in Paragraph 59 regarding infringement sets forth a legal  
11 conclusion to which no response is required. Smok admits that it sent a marketing  
12 email on or about January 5, 2017. Smok denies all remaining allegations in  
13 Paragraph 59.

14          60. Smok admits making a post on the smok\_tech Instagram page on or  
15 around March 9, 2016 and advertising a sweepstakes giveaway. Smok denies all  
16 remaining allegations in Paragraph 60.

17          61. Smok denies the allegations in Paragraph 61.

18          62. Smok admits making posts on the smok\_tech Instagram page on April 5,  
19 2017. Smok denies all remaining allegations in Paragraph 62.

20          63. Smok lacks knowledge or information sufficient to form a belief as to the  
21 truth or falsity of the allegations in Paragraph 63 and therefore denies the same.

22          64. Smok lacks knowledge or information sufficient to form a belief as to the  
23 truth or falsity of the allegations in Paragraph 64 and therefore denies the same.

24          65. Smok admits posting on the smok\_tech Instagram page on or around  
25 May 1, 2017. Smok denies all remaining allegations in Paragraph 65.

26          66. Smok lacks knowledge or information sufficient to form a belief as to the  
27 truth or falsity of the allegations in Paragraph 66 and therefore denies the same.  
28

1           67. Smok admits posting on the smok\_tech Instagram page on or around  
2 May 9, 2017. Smok denies all remaining allegations in Paragraph 67.

3           68. The allegation in Paragraph 68 regarding lawfulness sets forth a legal  
4 conclusion to which no response is required. Smok lacks knowledge or information  
5 sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 68  
6 regarding emails received by Sarieddine and therefore denies the same. Smok denies  
7 all remaining allegations in Paragraph 68.

8           69. The allegations in Paragraph 69 set forth legal conclusions to which no  
9 response is required. Smok denies all remaining allegations in Paragraph 69.

10          70. The allegations in Paragraph 70 regarding alleged breaches set forth legal  
11 conclusions to which no response is required. Smok admits that in February 2017, it  
12 communicated with Sarieddine regarding Sarieddine's e-liquid products and that it  
13 received a notice from the Industry and Trade Commerce Bureau. The terms of the  
14 Purported Agreement are reflected in the Purported Agreement itself, and Smok  
15 denies all allegations inconsistent with the text of the Purported Agreement. Smok  
16 denies all remaining allegations in Paragraph 70.

17          71. The allegations in Paragraph 71 regarding alleged breaches and  
18 infringement set forth legal conclusions to which no response is required. Smok  
19 admits that in January 2017, Sarieddine sent an email purporting to be a termination.  
20 The terms of the Purported Agreement are reflected in the Purported Agreement itself,  
21 and Smok denies all allegations inconsistent with the text of the Purported Agreement.  
22 Smok denies all remaining allegations in Paragraph 71.

23          72. The allegations in Paragraph 72 regarding alleged breaches set forth legal  
24 conclusions to which no response is required. Smok admits that it has filed trademark  
25 applications related to Smok and its products. The terms of the Purported Agreement  
26 are reflected in the Purported Agreement itself, and Smok denies all allegations  
27 inconsistent with the text of the Purported Agreement. Smok denies all remaining  
28 allegations in Paragraph 72.

1           73. The allegations in Paragraph 73 regarding alleged breaches set forth legal  
2 conclusions to which no response is required. Smok admits that on May 31, 2017,  
3 Smok sent a letter regarding the Purported Agreement. The terms of the Purported  
4 Agreement are reflected in the Purported Agreement itself, and Smok denies all  
5 allegations inconsistent with the text of the Purported Agreement. Smok denies all  
6 remaining allegations in Paragraph 73.

7           74. The allegations in Paragraph 74 regarding alleged breaches set forth legal  
8 conclusions to which no response is required. Smok admits that it has filed  
9 counterclaims in this action seeking a declaration that Saredidine's trademark  
10 registration is void, invalid, and unenforceable and must be canceled. The terms of the  
11 Purported Agreement are reflected in the Purported Agreement itself, and Smok  
12 denies all allegations inconsistent with the text of the Purported Agreement. Smok  
13 denies all remaining allegations in Paragraph 74.

14           75. Smok admits that on March 9, 2017, it communicated with Saredidine  
15 regarding the AL85 product. Smok denies all remaining allegations in Paragraph 75.

16           76. The allegations in Paragraph 76 regarding infringement set forth legal  
17 conclusions to which no response is required. Smok lacks knowledge or information  
18 sufficient to form a belief as to the truth or falsity of the remaining allegations in  
19 Paragraph 76, and therefore denies the same.

20           77. Smok lacks knowledge or information sufficient to form a belief as to the  
21 truth or falsity of the allegations in Paragraph 77, and therefore denies the same.

22           78. Smok lacks knowledge or information sufficient to form a belief as to the  
23 truth or falsity of the allegations in Paragraph 78, and therefore denies the same.

24           79. Smok lacks knowledge or information sufficient to form a belief as to the  
25 truth or falsity of the allegations in Paragraph 79, and therefore denies the same.

26           80. Smok lacks knowledge or information sufficient to form a belief as to the  
27 truth or falsity of the allegations in Paragraph 80, and therefore denies the same.  
28

1           81. Smok lacks knowledge or information sufficient to form a belief as to the  
2 truth or falsity of the allegations in Paragraph 81, and therefore denies the same.

3           82. Smok lacks knowledge or information sufficient to form a belief as to the  
4 truth or falsity of the allegations in Paragraph 82, and therefore denies the same.

5           83. The allegations in Paragraph 83 regarding infringement set forth legal  
6 conclusions to which no response is required. Smok lacks knowledge or information  
7 sufficient to form a belief as to the truth or falsity of the allegations regarding the  
8 Distributor Defendants, and therefore denies the same. Smok admits that it continues  
9 to use the phrase “Alien Kit” as of the date of filing of this Answer. Smok denies all  
10 remaining allegations in Paragraph 83.

11           84. The allegations in Paragraph 84 set forth legal conclusions to which no  
12 response is required. Smok denies all remaining allegations in Paragraph 84.

13           85. The allegations in Paragraph 85 regarding alleged breaches set forth legal  
14 conclusions to which no response is required. Smok lacks knowledge or information  
15 sufficient to form a belief as to the truth or falsity of the remaining allegations  
16 regarding the Distributor Defendants, and therefore denies the same. Smok denies all  
17 remaining allegations in Paragraph 85.

18           86. Smok lacks knowledge or information sufficient to form a belief as to the  
19 truth or falsity of the allegations regarding the Distributor Defendants, and therefore  
20 denies the same. The terms of the Purported Agreement are reflected in the Purported  
21 Agreement itself, and Smok denies all allegations inconsistent with the text of the  
22 Purported Agreement. Smok denies all remaining allegations in Paragraph 86.

23           87. Smok lacks knowledge or information sufficient to form a belief as to the  
24 truth or falsity of the remaining allegations regarding the Distributor Defendants, and  
25 therefore denies the same. Smok denies all remaining allegations in Paragraph 87.

26           88. Smok denies the allegations in Paragraph 88.

27           89. Smok denies all remaining allegations in Paragraph 89.

28

1           90. The allegations in Paragraph 90 set forth legal conclusions to which no  
2 response is required. Smok denies all remaining allegations in Paragraph 90.

3           91. The allegations in Paragraph 91 set forth legal conclusions to which no  
4 response is required. Smok denies all remaining allegations in Paragraph 91.

5           92. In response to Paragraph 92, Smok hereby incorporates its responses to  
6 Paragraphs 1-91 as though fully set forth herein.

7           93. Smok admits that Saredidine claims to own federal registrations on the  
8 Principal Register for the marks ALIEN VAPE and ALIEN VAPE. VAPE JUST GOT  
9 REAL! & Design. The allegations in Paragraph 93 regarding the effect of those  
10 registrations set forth legal conclusions to which no response is required. Smok lacks  
11 knowledge or information sufficient to form a belief as to the truth or falsity of the  
12 remaining allegations in Paragraph 93, and therefore denies the same.

13           94. The allegations in Paragraph 94 set forth legal conclusions to which no  
14 response is required. Smok denies all remaining allegations in Paragraph 94.

15           95. The allegations in Paragraph 95 set forth legal conclusions to which no  
16 response is required. Smok denies all remaining allegations in Paragraph 95.

17           96. The allegations in Paragraph 96 set forth legal conclusions to which no  
18 response is required. Smok denies all remaining allegations in Paragraph 96.

19           97. The allegations in Paragraph 97 set forth legal conclusions to which no  
20 response is required. Smok denies all remaining allegations in Paragraph 97.

21           98. The allegations in Paragraph 98 set forth legal conclusions to which no  
22 response is required. Smok denies all remaining allegations in Paragraph 98.

23           99. The allegations in Paragraph 99 set forth legal conclusions to which no  
24 response is required. Smok denies all remaining allegations in Paragraph 99.

25           100. In response to Paragraph 100, Smok hereby incorporates its responses to  
26 Paragraphs 1-99 as though fully set forth herein.

27           101. The allegations in Paragraph 101 set forth legal conclusions to which no  
28 response is required. Smok denies all remaining allegations in Paragraph 101.

102. Smok denies the allegations in Paragraph 102.

103. Smok lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 103, and therefore denies the same. Smok denies the remaining allegations in Paragraph 103.

104. The allegations in Paragraph 104 set forth legal conclusions to which no response is required. Smok denies all remaining allegations in Paragraph 104.

105. Smok denies the allegations in Paragraph 105.

106. Smok denies the allegations in Paragraph 106.

107. The allegations in Paragraph 107 set forth legal conclusions to which no response is required. Smok denies all remaining allegations in Paragraph 107.

108. In response to Paragraph 108, Smok hereby incorporates its responses to Paragraphs 1-107 as though fully set forth herein.

109. The allegations in Paragraph 109 set forth legal conclusions to which no response is required. Smok denies all remaining allegations in Paragraph 109.

110. The allegations in Paragraph 110 set forth legal conclusions to which no response is required. Smok denies all remaining allegations in Paragraph 110.

111. The allegations in Paragraph 111 set forth legal conclusions to which no response is required. Smok denies all remaining allegations in Paragraph 111.

112. In response to Paragraph 112, Smok hereby incorporates its responses to Paragraphs 1-111 as though fully set forth herein.

113. The allegations in Paragraph 113 set forth legal conclusions to which no response is required. Smok denies all remaining allegations in Paragraph 113.

114. The allegations in Paragraph 114 set forth legal conclusions to which no response is required. Smok denies all remaining allegations in Paragraph 114.

115. In response to Paragraph 115, Smok hereby incorporates its responses to Paragraphs 1-114 as though fully set forth herein.

116. The allegations in Paragraph 116 set forth legal conclusions to which no response is required. Smok denies all remaining allegations in Paragraph 116.

1           117. The allegations in Paragraph 117 set forth legal conclusions to which no  
2 response is required. Smok denies all remaining allegations in Paragraph 117.

3           118. In response to Paragraph 118, Smok hereby incorporates its responses to  
4 Paragraphs 1-117 as though fully set forth herein.

5           119. Smok admits that it executed the Purported Agreement in October 2016.  
6 Smok denies all remaining allegations in Paragraph 119.

7           120. Smok lacks knowledge or information sufficient to form a belief as to the  
8 truth or falsity of the allegations in Paragraph 120, and therefore denies the same.

9           121. The allegations in Paragraph 121 set forth legal conclusions to which no  
10 response is required. The terms of the Purported Agreement are reflected in the  
11 Purported Agreement itself, and Smok denies all allegations inconsistent with the text  
12 of the Purported Agreement. Smok denies all remaining allegations in Paragraph 121.

13           122. The allegations in Paragraph 122 set forth legal conclusions to which no  
14 response is required. The terms of the Purported Agreement are reflected in the  
15 Purported Agreement itself, and Smok denies all allegations inconsistent with the text  
16 of the Purported Agreement. Smok denies all remaining allegations in Paragraph 122.

17           123. The allegations in Paragraph 123 set forth legal conclusions to which no  
18 response is required. The terms of the Purported Agreement are reflected in the  
19 Purported Agreement itself, and Smok denies all allegations inconsistent with the text  
20 of the Purported Agreement. Smok denies all remaining allegations in Paragraph 123.

21           124. The allegations in Paragraph 124 set forth legal conclusions to which no  
22 response is required. The terms of the Purported Agreement are reflected in the  
23 Purported Agreement itself, and Smok denies all allegations inconsistent with the text  
24 of the Purported Agreement. Smok denies all remaining allegations in Paragraph 124.

25           125. The allegations in Paragraph 125 set forth legal conclusions to which no  
26 response is required. The terms of the Purported Agreement are reflected in the  
27 Purported Agreement itself, and Smok denies all allegations inconsistent with the text  
28 of the Purported Agreement. Smok denies all remaining allegations in Paragraph 125.

1           126. The allegations in Paragraph 126 set forth legal conclusions to which no  
2 response is required. The terms of the Purported Agreement are reflected in the  
3 Purported Agreement itself, and Smok denies all allegations inconsistent with the text  
4 of the Purported Agreement. Smok denies all remaining allegations in Paragraph 126.

5           127. The allegations in Paragraph 127 set forth legal conclusions to which no  
6 response is required. The terms of the Purported Agreement are reflected in the  
7 Purported Agreement itself, and Smok denies all allegations inconsistent with the text  
8 of the Purported Agreement. Smok denies all remaining allegations in Paragraph 127.

9           128. The allegations in Paragraph 128 set forth legal conclusions to which no  
10 response is required. Smok denies all remaining allegations in Paragraph 128.

11           129. In response to Paragraph 129, Smok hereby incorporates its responses to  
12 Paragraphs 1-128 as though fully set forth herein.

13           130. The allegations in Paragraph 130 set forth legal conclusions to which no  
14 response is required. Smok lacks knowledge or information sufficient to form a belief  
15 as to the truth or falsity of the remaining allegations in Paragraph 130, and therefore  
16 denies the same.

17           131. Smok denies the allegations in Paragraph 131.

18           132. The allegations in Paragraph 132 set forth legal conclusions to which no  
19 response is required. Smok denies all remaining allegations in Paragraph 132.

20           133. The allegations in Paragraph 133 set forth legal conclusions to which no  
21 response is required. Smok denies all remaining allegations in Paragraph 133.

22           134. In response to Paragraph 134, Smok hereby incorporates its responses to  
23 Paragraphs 1-133 as though fully set forth herein.

24           135. Smok admits that it executed the Purported Agreement in October 2016.  
25 The terms of the Purported Agreement are reflected in the Purported Agreement itself,  
26 and Smok denies all allegations inconsistent with the text of the Purported Agreement.  
27 The allegations in Paragraph 135 regarding “the duty of good faith and fair dealing”  
28

1 set forth legal conclusions to which no response is required. Smok denies all  
2 remaining allegations in Paragraph 135.

3 136. The allegations in Paragraph 136 set forth legal conclusions to which no  
4 response is required. Smok denies all remaining allegations in Paragraph 136.

5 137. The allegations in Paragraph 137 set forth legal conclusions to which no  
6 response is required. To the extent a response is required, Smok admits that on May  
7 31, 2017, it terminated the Purported Agreement. Smok denies all remaining  
8 allegations in Paragraph 137.

9 138. The allegations in Paragraph 138 set forth legal conclusions to which no  
10 response is required. Smok denies all remaining allegations in Paragraph 138.

11 139. The allegations in Paragraph 139 set forth legal conclusions to which no  
12 response is required. Smok denies all remaining allegations in Paragraph 139.

13 140. In response to Paragraph 140, Smok hereby incorporates its responses to  
14 Paragraphs 1-139 as though fully set forth herein.

15 141. The allegations in Paragraph 141 set forth legal conclusions to which no  
16 response is required. Smok lacks knowledge or information sufficient to form a belief  
17 as to the truth or falsity of the allegations regarding the Distributor Defendants, and  
18 therefore denies the same. Smok denies all remaining allegations in Paragraph 141.

19 142. The allegations in Paragraph 142 set forth legal conclusions to which no  
20 response is required. Smok lacks knowledge or information sufficient to form a belief  
21 as to the truth or falsity of the allegations regarding the Distributor Defendants, and  
22 therefore denies the same. Smok denies all remaining allegations in Paragraph 142.

23 143. The allegations in Paragraph 143 set forth legal conclusions to which no  
24 response is required. To the extent a response is required, Smok lacks knowledge or  
25 information sufficient to form a belief as to the truth or falsity of the allegations in  
26 Paragraph 143, and therefore denies the same.

27 144. The allegations in Paragraph 144 set forth legal conclusions to which no  
28 response is required. To the extent a response is required, Smok lacks knowledge or

1 information sufficient to form a belief as to the truth or falsity of the allegations in  
2 Paragraph 144, and therefore denies the same.

### 3 **AFFIRMATIVE DEFENSES**

#### 4 **First Affirmative Defense**

5 Sarieddine's claims are barred in whole or in part because of his own conduct.  
6 Sarieddine claims to have reached the conclusion around August 2016 that Smok was  
7 likely to cause confusion, to cause mistake, or to deceive others into erroneously  
8 believing that Smok's goods are authorized by, licensed by, sponsored by, endorsed  
9 by, or otherwise associated with Sarieddine and/or products he sells under the phrase  
10 Alien Vape. Instead of seeking to stop this allegedly infringing conduct, Sarieddine  
11 decided he would seek to profit from concurrent use by Smok of a product name that  
12 he considered infringing. Sarieddine then actively, aggressively, and repeatedly for a  
13 period of many months, including months long beyond his purported termination of  
14 the Distribution Term in January 2017, advertised and encouraged Smok and many  
15 others to advertise, promote, and otherwise engage in the concurrent use of the names  
16 that Sarieddine now claims resulted in confusion as to source among customers.  
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21 This conduct caused any confusion among consumers that Sarieddine is able to  
22 prove, constituted unclean hands that bars him from any equitable remedy including  
23 any injunctive relief and any financial recovery, constituted consent to Smok's  
24 continued use of the allegedly infringing marks, and destroyed any trademark rights  
25 he may have had.  
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**Second Affirmative Defense**

Sarieddine entered into the Purported Agreement with Smok, whereby Sarieddine acquiesced to Smok's continued use of the term Alien without any quality control by Sarieddine. Sarieddine also tolerated usage of the term Alien by multiple manufacturers and distributors of electronic cigarette products including individuals or entities using the terms Alienvapor.com, Alien Vision, Alien Blood, Alien Piss, Alien Kiss, and many others. These uses, including the ones Sarieddine has admitted are causing confusion in the marketplace such as Alien Blood and Alien Piss, combined with many other individuals or entities using similarly named electronic cigarette products, have been consented to by Sarieddine through his failure to monitor and enforce any exclusive rights he may have had. Indeed, Alien Visions has been used in connection with e-juice with Sarieddine's actual or constructive knowledge since at least 2010. Thus, Sarieddine's claims are barred, in whole or in part, under the doctrine of acquiescence/consent.

**Third Affirmative Defense**

Sarieddine entered into the Purported Agreement with Smok, whereby Sarieddine acquiesced to Smok's continued use of the term Alien without any quality control by Sarieddine. Sarieddine also tolerated usage of the term Alien by multiple manufacturers and distributors of electronic cigarette products including individuals or entities using the terms Alienvapor.com, Alien Vision, Alien Blood, Alien Piss, Alien Kiss and many others. These uses, including the ones Sarieddine has admitted are causing confusion in the marketplace such as Alien Blood and Alien Piss, combined with many other individuals or entities using similarly named electronic cigarette products, have been consented to by Sarieddine through his failure to monitor and enforce any exclusive rights he may have had. Indeed, Alien Visions has been used in connection with e-juice with Sarieddine's actual or constructive knowledge since at least 2010. Thus, Sarieddine's claims are barred, in whole or in part, under the doctrine of abandonment.

**Fourth Affirmative Defense**

Sarieddine entered into the Purported Agreement with Smok, whereby Sarieddine acquiesced to Smok's continued use of the term Alien without any quality control by Sarieddine. Sarieddine also tolerated usage of the term Alien by multiple manufacturers and distributors of electronic cigarette products including individuals or entities using the terms Alienvapor.com, Alien Vision, Alien Blood, Alien Piss, Alien Kiss and many others. These uses, including the ones Sarieddine has admitted are causing confusion in the marketplace such as Alien Blood and Alien Piss, combined with many other individuals or entities using similarly named electronic cigarette products, have been consented to by Sarieddine through his failure to monitor and enforce any exclusive rights he may have had. Indeed, Alien Visions has been used in connection with e-juice with Sarieddine's actual or constructive knowledge since at least 2010. Thus, Sarieddine's claims are barred, in whole or in part, under the doctrine of waiver/estoppel.

**Fifth Affirmative Defense**

Sarieddine has never been the first user nor the substantially exclusive user of the term Alien in connection with e-cigarette products. Alienvapor.com, Alien Vision, Alien Blood, Alien Piss, Alien Kiss and many others have been using the term Alien in connection with vaporizers, e-juices, hookahs, and e-cigarette parts for many years. Therefore, Sarieddine's claims are barred, in whole or in part, because U.S. Trademark Registration Nos. 4997336 and 4517249 are invalid and unenforceable, and Sarieddine never had any common law trademark rights.

**Sixth Affirmative Defense**

In applying to register one of the alleged marks, Sarieddine, through his agent, committed fraud by declaring that the alleged mark was in use on electronic cigarettes and oral vaporizers for smokers, when in fact the alleged mark was not in use on those goods when the application was filed. Additionally, on information and belief, Sarieddine has fabricated documents in this litigation related to the date of his first use

1 of his alleged marks. Therefore, Sarieddine's claims are barred, in whole or in part, by  
2 the doctrine of unclean hands.

### 3 **Seventh Affirmative Defense**

4 In applying to register one of the alleged marks, Sarieddine, through his agent,  
5 committed fraud by declaring that the alleged mark was in use on electronic cigarettes  
6 and oral vaporizers for smokers, when in fact the alleged mark was not in use on those  
7 goods when the application was filed. Thus, Sarieddine's claims are barred, in whole  
8 or in part, because he fraudulently procured U.S. Trademark Registration  
9 No. 4997336.

### 10 **Eighth Affirmative Defense**

11 Sarieddine's claims are barred, in whole or in part, because the Purported  
12 Agreement was illusory in that it was not supported by consideration.

### 13 **Ninth Affirmative Defense**

14 In applying to register one of the alleged marks, Sarieddine, through his agent,  
15 committed fraud by declaring that the mark was in use on electronic cigarettes and  
16 oral vaporizers for smokers, when in fact the mark was not in use on those goods  
17 when the application was filed. It was Sarieddine's assertion of rights flowing from  
18 that registration that induced Smok to enter into the Purported Agreement. Therefore,  
19 Sarieddine's claims are barred, in whole or in part, because he fraudulently induced  
20 Smok to enter into the Purported Agreement.

### 21 **Tenth Affirmative Defense**

22 After signing the Purported Agreement, Smok endeavored to market and sell  
23 Sarieddine's ALIEN VAPE e-liquid in China. Smok, however, was unable to do so  
24 for reasons beyond its control. Thus, Sarieddine's claims are barred, in whole or in  
25 part, because of the doctrine of force majeure.

### 26 **Eleventh Affirmative Defense**

27 After signing the Purported Agreement, Smok endeavored to market and sell  
28 Sarieddine's ALIEN VAPE e-liquid in China. Smok, however, was unable to do so

1 for reasons beyond its control. Therefore, Sarieddine's claims are barred, in whole or  
2 in part, because of the doctrine of excused performance.

### 3 **Twelfth Affirmative Defense**

4 Through the purported Settlement Agreement and at least one other agreement  
5 related to Smok's products, Sarieddine attempted to restrict competition based on non-  
6 existent trademark rights. Sarieddine knew or should have known that he had no  
7 justifiable interest in a worldwide prohibition on the use of the word Alien in  
8 connection with certain goods where such a prohibition would cover countries in  
9 which he did not do business and phrases for which there was no possible chance of  
10 consumer confusion even when used in connection with e-cigarette products. Thus,  
11 Sarieddine's claims are barred, in whole or in part, because of Sarieddine's trademark  
12 misuse.

### 13 **Thirteenth Affirmative Defense**

14 Alien is a generic term in the e-cigarette industry having been used for years by  
15 many different manufacturers and distributors to designate various products including  
16 vaporizers, e-juices, hookahs, and wires used to heat liquid that is inhaled by  
17 consumers. Generic terms are not capable of serving as trademarks. Accordingly,  
18 Plaintiff's Trademark Registrations are invalid and should be cancelled, Plaintiff has  
19 no trademark rights under common law, and Plaintiff has no protectable interests  
20 under the purported Settlement Agreement.

### 21 **Reservation of Defenses**

22 Smok hereby reserves any and all defenses that are available under the Federal  
23 Rules of Civil Procedure and the Lanham Act and any other defenses, at law or in  
24 equity, that may now exist or become available later as a result of discovery and  
25 further factual investigation during this litigation.

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1 Dated: January 18, 2018

Respectfully submitted,

2 LOCKE LORD LLP

3  
4 By: /s/ F. Phillip Hosp  
5 F. Phillip Hosp

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